

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Charles R. Buckman, Dennis J. Cox, Donovan M. Kolbly, Craig S. Cantrell, Brian C. Smith, Jon H. Werner, Marc Willebeek-LeMair, Joe Wayne Blackard, Francis S. Webster III		
Assignee:	TippingPoint Technologies, Inc.		
Title:	System and Method for Programming Network Nodes		
Serial No.:	09/928,771	Filing Date:	August 13, 2001
Examiner:	Joseph E. Avellino	Group Art Unit:	2143
Docket No.:	066101.0291	Customer No.:	33438

Austin, Texas
October 22, 2007

COMMISSIONER FOR PATENTS
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APPEAL BRIEF UNDER 37 CFR § 41.37

Sir:

Applicants submit this Appeal Brief pursuant to the Notice of Appeal filed in this case on May 21, 2007, and the Notice of Panel Decision from Pre-Appeal Brief Review mailed on August 20, 2007. The fee for this Appeal Brief is being paid via the USPTO EFS. The Board is also authorized to deduct any other amounts required for this appeal brief and to credit any amounts overpaid to Deposit Account No. 502264.

I. REAL PARTY IN INTEREST - 37 CFR § 41.37(c)(1)(i)

The real party in interest is the assignee, TippingPoint Technologies, Inc., as named in the caption above and as evidenced by the assignment set forth at Reel 012385, Frame 0526.

II. RELATED APPEALS AND INTERFERENCES - 37 CFR § 41.37(c)(1)(ii)

Based on information and belief, there are no appeals or interferences that could directly affect or be directly affected by or have a bearing on the decision by the Board of Patent Appeals and Interferences in the pending appeal.

III. STATUS OF CLAIMS - 37 CFR § 41.37(c)(1)(iii)

Claims 34, 47 and 60-69 are pending in the application. Claims 34, 47 and 60-69 stand rejected. The rejection of claims 34, 47 and 60-69 is appealed. Appendix "A" contains the full set of pending claims.

IV. STATUS OF AMENDMENTS - 37 CFR § 41.37(c)(1)(iv)

On June 6, 2005, Applicants filed a Response to Restriction Requirement, electing Group I, claims 1-24 were elected with traverse. On October 28, 2005, Applicants filed a Response to Non-Final Office Action in which claims 1, 8-10, and 19 were amended. On April 17, 2006, Applicants filed an RCE Submission in which claims 1-33 were canceled and claims 34-59 were added. On November 1, 2006, Applicants filed a Response to Non-Final Office Action in which claims 34 and 47 were amended, claims 35-46 and 48-59 were canceled, and claims 60-69 were added. No other amendments to the claims have been submitted.

V. SUMMARY OF CLAIMED SUBJECT MATTER - 37 CFR § 41.37(c)(1)(v)

The independent claims are summarized hereinbelow with reference to U.S. Patent Application publication number 20030033519, published on February 13, 2003. Independent claim 34 recites that the system comprises a service creation tool, a service creation control center, and at least one network node interfaced with the network (Specification, paragraphs 31-34; Fig. 1). The node comprises a network processor that is operable to perform one or more packet processing behaviors (Specification, paragraph 36, Fig. 1). The service creation tool is operable to program a service definition package that defines a plurality of packet processing behaviors (Specification, paragraph 32, Fig. 2). The service control center is interfaced with the packet-based

network and operable to accept the service definition package for deployment to at least one network node (Specification, paragraphs 35-36, Figure 2).

Independent claim 47 recites limitations for a method for providing network services to subscribers using a programmable packet-based network having a plurality of nodes, with at least one of said nodes having a network processor, wherein the nodes are operable to perform one or more packet processing behaviors translated from a network programming language (Specification, paragraphs 31-34; Fig. 1). The method comprises the steps of: using a service creation tool to program a service definition package, said service definition package defining a plurality of packet processing behaviors (Specification, paragraph 32, Fig. 2); using a service control center to accept said service definition package for deployment to network nodes on said packet-based network (Specification, paragraphs 35-36, Figure 2); selecting one or more network processors for implementing said service definition package; providing network processor-specific instructions and data to perform packet processing behaviors; loading said instructions and data into said one or more network processors; monitoring information from said one or more network processors; and utilizing said information from said one or more network processors to report status information about said service definition package (Specification, paragraphs 40-50; Figs. 5-6).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL - 37 CFR § 41.37(c)(1)(vi)

The question submitted for review is whether claims 34, 47, and 60-69 are properly rejected under 35 U.S.C. §103(a) as unpatentable over Publication No. 2002/0069274 to Tindal et al. (hereinafter “Tindal”) in view of Publication No. 2002/0052941 to Patterson (hereinafter “Patterson”).

VII. ARGUMENT - 37 CFR § 41.37(c)(1)(vii)

In summary, Applicants respectfully submit that the rejection of claims 34, 47, and 60-69 under 35 U.S.C. §103(a) in the Final Office Action should be removed because the combination of Tindal and Patterson fails to disclose all of the limitations recited in independent claims 34 and 47.

As recited in independent claims 34 and 47, embodiments of Applicants' invention provide a system and method for programming a packet-based network having a plurality of nodes for providing services to network subscribers. Independent claim 34 recites that the system comprises a service creation tool, a service creation control center, and at least one network node interfaced with the network. The node comprises a network processor that is operable to perform one or more packet processing behaviors. The service creation tool is operable to program a service definition package that defines a plurality of packet processing behaviors. The service control center is interfaced with the packet-based network and operable to accept the service definition package for deployment to at least one network node. Independent claim 47 recites limitations for a method of programming a packet-based network using a service-creation tool and service control center, as described above.

Tindal is directed to a system and method for configuration, management and monitoring of network resources such as routers, optical devices, and the like. (See for example, paragraphs 1, 11, and 17.) Applicants submit that those of skill in the art understand that service creation and configuration are directed to different aspects of providing network services. Service creation is the process of generating new functionality to provide a network service. Configuration, on the other hand, relates to changing the parameters for existing functionality.

Examiner states that Tindal discloses a service creation tool (administrator 110) that is operable to program a service definition package. Applicants submit that it does not. Service creation is not discussed anywhere in Tindal. Furthermore, Tindal does not disclose a service definition package; therefore Tindal cannot disclose a service creation tool that is operable to program a service definition package. Examiner equates the creation of a configuration record, or the modification of a configuration record, to the programming of a service definition package. Modification of a configuration record is an act of configuration. It is not service creation, nor modification of a service definition package, as those terms are understood by those of skill in the art.

Patterson is devoid of any discussion of a service creation or a service definition package. Therefore, it fails to supply the teachings that are missing in Tindal.

For the reasons set forth hereinabove, Applicants respectfully submit that the rejection of claims 34, 47 and 60-69 under 35 U.S.C. §103(a) is improper and this rejection should be removed. Claims 34 and 47 are allowable over the art of record and the pending dependent claims are allowable, since they are dependent on an allowable base claim.

VIII. CLAIMS APPENDIX - 37 CFR § 41.37(c)(1)(viii)

A copy of the pending claims involved in the appeal is attached as Appendix A.

IX. EVIDENCE APPENDIX - 37 CFR § 41.37(c)(1)(ix)

None.

X. RELATED PROCEEDINGS APPENDIX - 37 CFR § 41.37(c)(1)(x)

None.

XI. CONCLUSION

For the reasons set forth above, Applicants respectfully submit that rejection of pending Claims 34, 47, and 60-69 is unfounded, and requests that the rejection of claims 34, 47, and 60-69 be reversed.

FILED ELECTRONICALLY
October 22, 2007

Respectfully submitted,

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CLAIMS APPENDIX - 37 CFR § 41.37(c)(1)(viii) - APPENDIX A

1-33. (Cancelled)

34. (Previously Presented) A system for programming a packet-based network having a plurality of nodes for providing services to network subscribers, the system comprising:

- a service creation tool operable to program a service definition package, said service definition package defining a plurality of packet processing behaviors;

- a service control center interfaced with the packet-based network and operable to accept said service definition package for deployment to at least one network node, said service control center comprising:

- a first logic element operable to select one or more network processors for implementing said service definition package;

- a second logic element operable to provide network processor-specific instructions and data to perform packet processing behaviors;

- a third logic element operable to load said instructions and data into said one or more network processors;

- a fourth logic element operable to monitor information from one or more network processors; and

- a fifth logic element operable to utilize said information from said one or more network processors to report status information about said service definition package;

and

- at least one network node interfaced with the network, the node having a network processor, the node operable to perform the one or more packet processing behaviors.

35-46. (Cancelled)

47. (Previously Presented) A method for providing network services to subscribers using a programmable packet-based network having a plurality of nodes, at least one of said nodes having a network processor, said nodes operable to perform one or more packet processing behaviors translated from a network programming language, the method comprising:

- using a service creation tool to program a service definition package, said service definition package defining a plurality of packet processing behaviors;
- using a service control center to accept said service definition package for deployment to network nodes on said packet-based network;
- selecting one or more network processors for implementing said service definition package;
- providing network processor-specific instructions and data to perform packet processing behaviors;
- loading said instructions and data into said one or more network processors;
- monitoring information from said one or more network processors; and
- utilizing said information from said one or more network processors to report status information about said service definition package.

48-59. (Cancelled)

60. (Previously Presented) The system of claim 34, wherein said fourth logic element performs said monitoring indirectly using a proxy function.

61. (Previously Presented) The system of claim 35, wherein said proxy function utilizes an element manager function to provide access to information for said monitoring function.

62. (Previously Presented) The system of claim 34, further comprising a sixth logic element operable to validate said network processors for implementing said service definition package.

63. (Previously Presented) The system of claim 34, wherein a seventh logic element selects polling tasks used for said monitoring.

64. (Previously Presented) The system of claim 34, wherein an eighth logic element summarizes status information obtained from said monitoring.

65. (Previously Presented) The method of claim 47, further comprising: performing said monitoring indirectly using a proxy function.

66. (Previously Presented) The method of claim 48, further comprising: utilizing an element manager function to provide access to information for said monitoring function.

67. (Previously Presented) The method of claim 47, further comprising: validating said network processors for implementing said service definition package.

68. (Previously Presented) The method of claim 47, further comprising: determining polling tasks used for said monitoring.

69. (Previously Presented) The method of claim 47 further comprising: summarizing status information obtained from said monitoring.

EVIDENCE APPENDIX - 37 CFR § 41.37(c)(1)(ix)

None.

RELATED PROCEEDINGS APPENDIX - 37 CFR § 41.37(c)(1)(x)

None.